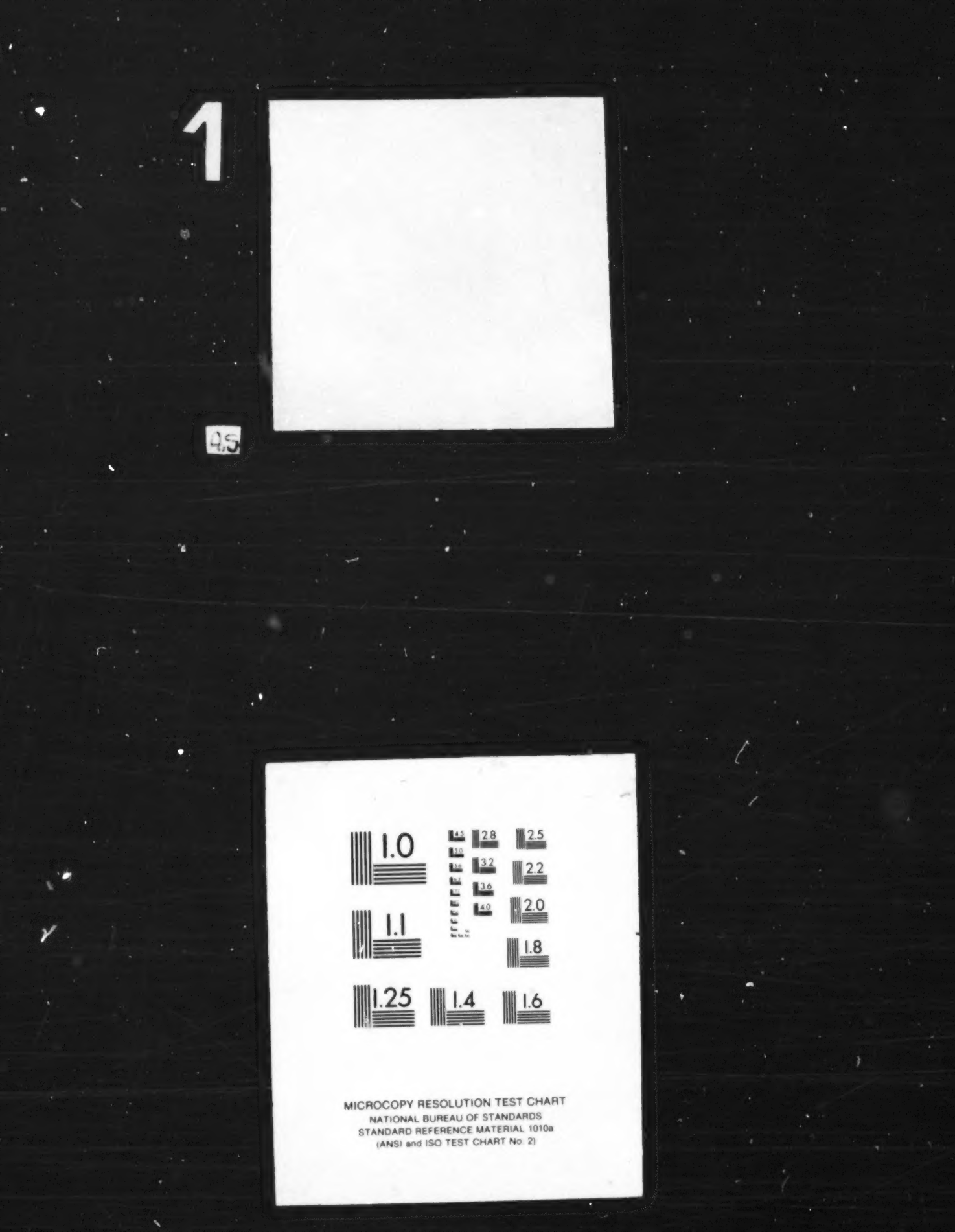
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ABSTRACT

The implications for research of the Lau regulations, the political climate in which the regulations were withdrawn, and the Lau remedies are explored. Research activities have been mandated by the Bilingual Education Act of 1978 in the areas of needs assessment, the quality of educational services, and the effectiveness of Title VII programs. Issues of bilingualism and bilingual education research that have retained their salience throughout the political change process include language proficiency assessment, the language acquisition process among bilinguals, and the role of language in access to education. The withdrawal of the Lau regulations signals a changing role for the federal government in bilingual education. The initiative for protecting equal access to education is likely to shift from the executive branch to the courts. Court decisions regarding bilingual education have drawn heavily on research. Documentation of the beneficial effects of mandated remedies on bilingual children remains limited. It is important for the research community to demonstrate the benefits of implementing the proposed remedies in terms of the economic costs of failure to provide adequate educational services to language-minority students. In addition, researchers should monitor the provision of equal education services under state and local jurisdictions as responsibility is shifted away from the federal government. (RW)

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IMPLEMENTING THE LAU DECISION IN THE 1980'S: IMPLICATIONS FOR RESEARCH

Robert Berdan

Research on bilingualism and bilingual education has had a long and rather disjointed history. This work stretches back to the pioneering work of Hugo Schuchardt in the last century, on through the detailed observations of Einar Haugen and Uriel Weinreich in the middle of this century, to the major studies of national scope now in progress. Throughout this time, attention to bilingualism has sometimes increased, sometimes lessened. Never, however, has the phenomenon of bilingualism been subjected to greater scrutiny than at the present time. It is no coincidence that this surge of interest in things bilingual corresponds in time with increased availability in this country of bilingual education, and with increased federal support for the education of children for whom English is not a first language.

The proposed rules for "Non-discrimination Under Programs Receiving Federal Assistance Through the Department of Education, Effectuation of Title VI of the Civil Rights Act of 1964," (Lau Regulations) published in the Federal Register August 5, 1980, and withdrawn by Secretary of Education Terrel Bell on February 2, 1981, did not contain provisions which would have direct impact on the conduct of research related to bilingual education. Similarly, the presently operative "Task Force Findings Specifying Remedies Available for Eliminating Past Educational Practices Ruled Unlawful Under Lau vs. Nichols" (Lau Remedies) does not directly affect the conduct of bilingual education research. Nonetheless, both of these documents, the political climate in which the former was withdrawn, and the legislative mandate which the latter seeks to implement, all have implications for the need for research, and for its conduct.

The impetus for most of the major efforts in learning about bilingualism and bilingual education now being undertaken by the federal government derives from the Bilingual Education Act of 1978 (Title VII of the Amendments to the Elementary and Secondary Education Act). During the deliberations on those amendments Congress became aware of the need for well-researched information on bilingual education. Part C of the Bilingual Education Act thus provides a schedule of congressionally mandated research activities. Those activities are coordinated across a number of agencies in the federal government, including the Office of Bilingual Education and Minority Language Affairs, the National Institute of Education, and the National Center for Education Statistics, by an interagency group that has come to be known as the Part C Committee.

The scope of those studies and updates on their status has been reported regularly by the National Clearinghouse on Bilingual Education.[1] Without going into detail on each of the twenty or more studies mandated in Part C, it is useful to consider here the three general areas in which that work is directed. First, there are a number of projects that relate to the assessment of need for educational services on the part of language minority students and the needs of the schools and the teachers that serve them. These studies have included attempts to count the number of children involved, to project those counts into the future and to make some determination of the contingencies under which such projections must be made. The assessment of need also includes an effort to determine the supply and demand for bilingual teachers, to determine their qualifications and the kinds of training programs which best prepare them.

The second broad area relates to the quality of educational services and how best to improve them. Some of these projects

1. Forum, December 1979, pp. 2-3; December 1980, pp. 4-6.

look directly at what is happening in classrooms, and more broadly in bilingual education. This area has also included the development of models or patterns for classroom activities, and considers the ways that might be used to disseminate those models. It has included such things as the development and assessment of standards for entering and exiting special programs. It has also included projects related to inservice training, parent involvement, and a number of other areas in the delivery of services to children. The third broad area of Part C relates to general consideration of the effectiveness of Title VII programs, how they are managed both locally and at the federal level, and to their continuing operation and funding.

These congressionally mandated projects by no means exhaust the federal investment in bilingual education research. Each of the agencies involved in the Part C Committee has also committed some discretionary funds to research related to bilingual education. The National Center for Bilingual Research, funded through the National Institute of Education, also conducts a research agenda on bilingualism and bilingual education. Together with the research from non-federal sources, the present national research effort bears in one way or another on almost every issue raised by the Lau Remedies or the now withdrawn Lau Regulations.

The withdrawal of the proposed regulations leaves some issues of bilingual education research moot; others, however, remain salient even in the midst of political change. One of the first things apparent to a reader of the proposed regulations was a proliferation of labels related to language proficiency, "Limited English Proficiency, English Superior, Primary Language Superior, Comparably Limited." The proposed definitions of those terms are not now of immediate interest. The underlying issue of language proficiency, however, remains of critical importance to schools which must make decisions regarding the placement of children in educational programs. Test instruments which yield scores called language proficiency have multiplied now for several years. The

National Institute of Education has sponsored a series of projects, and now major conference on issues related to language proficiency and language proficiency testing.[2]

There remains unresolved, however, the sticky problem of what language proficiency is, besides scores on core test or another. Language proficiency is not an idea that grows from any well-grounded theory of language or linguistics. It derives instead from the world of testing. If one introspects on commonsensical notions of proficiency, it is apparent that in general older children are more proficient language users than younger children, that children who are proficient in one context may be less so in another, and that in most general terms, proficiency relates to language in action--communication--not just knowledge of language structure. Out of a fairly broad range of studies of classroom ethnography, researchers are beginning to develop a feeling for how widely diverse are the communication contexts in which children use language, both in and out of instructional settings, and how varied are the demands of different communicative tasks.

Proficiency assessment, however, has tended to define its own context, and frequently its own set of tasks. These classroom ethnographic studies have heightened concerns that proficiency test scores may be artifacts of testing situations, obscuring more general relationships between language proficiency and successful achievement in the classroom. One project now underway which specifically addresses these concerns is the work of Benji Wald at the National Center for Bilingual Research, examining the effects of context and topic on bilingual children's language use. Language proficiency assessment, both in English and in the home language of non-native speakers of English, will continue to play an important role in bilingual education, both in the placement of

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2. Language Proficiency Assessment Symposium, organized by Dr. Charlene Rivera, Interamerica Research Associates, March 14-18, 1981.

individual students in programs, and in the decisions of districts to provide services. This continuing reliance on proficiency assessment warrants continuing research on what language proficiency really is, how it is differentiated, and how it is best measured.

Given that language proficiencies develop through time as children mature, it is reasonable to inquire what the acquisition process looks like for children who are in the process of learning two languages. Implicit in the proposed regulations was an assumption that children who are in the process of acquiring two languages are appropriately compared with children in monolingual environments who are learning only one language. By extension, the proposed regulations would then have labelled as "comparably limited" those children in bilingual contexts whose developmental progress does not match either set of their monolingual peers. The research base which might be advanced to justify this extraordinarily negative label is extremely slim and not particularly supportive of the premise.

It is fairly well established that in at least some respects, first language acquisition mirrors second language acquisition, and that there comes a point at which the maturing bilingual learner might not usefully be distinguished from monolingual peers of either language. However, the protracted process of developing proficiency in two languages, what constitutes optimal or normal development, and what language experiences are necessary to allow or to optimize that development remain largely unknown. In the face of that ignorance, the prospect of labelling a child as "comparably limited" or "semilingual" or even "alingual" because development in neither language considered by itself matches that of monolingual age mates, even though total language learning may be far greater than that of monolingual peers, is both pedagogically and socially foreboding. The National Center for Bilingual Research now has two longitudinal studies of bilingual acquisition underway. One looks at children in the process of

acquiring Spanish and English; the other at Korean and English. These studies will follow the progress of sibling pairs over a three year span. These studies are very much within the framework of research priorities outlined earlier by Tucker[3], looking at language development and particularly at the development of communication or language functioning abilities in bilingual children.

The implications of the Lau Remedies and the Regulations for bilingual research go well beyond the idea of proficiency and English language proficiency in particular. There is nothing in the Regulations, the Remedies, or in the Civil Rights Act from which they derive, that requires children or anyone else to become proficient in English. Why then the concern with proficiency and proficiency assessment? Behind the concern with proficiency is a concern with access, access to federally assisted educational programs. The Civil Rights Act requires that access not be denied because of race, sex or national origin. It may be self-evident to ESL educators that if a child cannot understand what is going on in the classroom, there is not equal access to education for that child, relative to children who comprehend the instruction. As the Lau vs. Nichols case wended through the legal system, two courts ruled in favor of the San Francisco School District, agreeing that physical presence of Chinese speaking children in the classroom, English textbooks in hand, met the requirement of equal access. Only at the level of the Supreme Court was it recognized that "students who do not understand English are effectively foreclosed from any meaningful education."[4]

Following that Supreme Court decision, the Congress passed the Equal Educational Opportunities Act of 1974. This legislation

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3. A. Richard Tucker. "Directions for future research within the context of bilingual education programs." Paper presented at TESOL Detroit, 1981.

4. Lau vs. Nichols, p. 568.

goes beyond the Civil Rights Act, stating in part that "No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by . . . the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its educational programs."[5]

The case of Lau vs. Nichols served to refine the existing notions of educational equity for children who did not speak English. Under the Equal Educational Opportunities Act, court decisions have drawn the requirements for equity even more finely. The primary case in point was the Ann Arbor Black English Case. In that case it was determined that children who are speakers of Black English were precluded from equal participation in the school's educational program by the fact that they had not learned to read successfully, the failure of reading instructions was in turn related to the school's having not accommodated the children's dialect of English; hence a language barrier to participation.

The study of participation in the classroom has continued to be refined in the recent and ongoing work on classroom ethnography. This work holds definite promise for bringing greater understanding of the ways in which language can constitute a barrier to access and participation in education and to do so in a much more particularistic sense than was considered in the Lau case.

The issue of participation is integrally related to the issue 20 USC 1703 (f).of proficiency, coming together in the study of communicative competence. To date that study lacks firm conceptual unity, perhaps reflecting the variety of discipline orientations that have been drawn together. Nonetheless, that work continues to highlight the relationship of linguistic proficiencies to participation in communication events. With

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5. 20 USC 1703(f).

continuing need to provide equitable education for linguistically different students comes the need to continue research in classroom ethnography and communicative competence.

In their very brief tenure the proposal Lau Regulations managed to draw criticism from virtually every quarter, from the general public as well as educators, politcians and researchers. The withdrawal of those regulations clearly signals a changing role for the federal government. Disclaimers from the Secretary of Education notwithstanding, the initiative for protecting the civil rights and educational opportunity for language minority students is likely to shift from the executive arm of the government to the courts. Court decisions to date in the area of bilingual education have drawn on bilingual research in many different ways. One thing that is apparent from reading through court decisions, including recent cases such as the decision against the Texas Education Agency by the U.S. District Court in Tyler, Texas,[6] is that the level of documentation which has been established in the various aspects of bilingual research is far from uniform. In particular, documentation of the prejudicial effect of past educational practices on bilingual children is extremely thorough. In contrast to this, documentation of the beneficial effects of mandated remedies remains slim in many respects. That is not by any means to say that there is impressive conflicting documentation that the proposed remedies have no beneficial effect. It is simply to point out that much of that research remains to be done.

In the past courts have been willing to mandate remedies based on the testimony of expert witnesses that the interventions will produce results. That willingness, however, resulted from the fact that the proposed interventions were in large part innovations and empirical assessment of their impact was

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6. United States of America, Mexican American Legal Defense Fund, LULAC, and G. I. Forum, vs. The State of Texas, et al.

premature. Times have changed, and there are now districts that have had innovative bilingual programs in place for an entire generation of students. The requirement to demonstrate beneficial impact has now become realistic, and the bilingual research community must act now to put that research base in place. Moreover, if it is to have credibility that research must be broadly based, confirmatory and not jut explanatory in nature.

Considering what kind of regulations are likely to replace those that have been withdrawn, one can identify a number of research implications. The present administration has made quite clear that part of the justification for any regulations will be the economic cost of the regulations versus the economic payoff. Much has been made of the estimated price tag for implementing the Lau Regulations. There is little if any research in place that provides an estimate of the cost of failure to provide adequate educational services to language minority children, or the economic benefit derived from equipping children to succeed in today's world. There are many costs that are often overlooked. The United States Army, for example, now finds itself in the position of having to provide English language training and basic skills training for recruits who did not acquire these skills in the public schools. The military has even been forced to contemplate providing pre-enlistment English language training, to bring recruits to a point at which they can function in military training. At a point in time at which there is renewed emphasis on defense preparedness, the wisdom of reducing services to non-English speaking children in the schools, and then providing comparable instruction in a military environment seems of dubious wisdom.

Conversely, the economic payoff of other educational interventions is only beginning to show. For example a study of Project Headstart children that has continued since 1962 now shows that the federal investment in headstart services is recovered several times over in savings to schools later in the careers of

these children and in increased lifetime earnings.[7] Bilingual education may well be able to demonstrate similar cost advantages. The time has come to initiate the research that will demonstrate whether or not that payoff can be anticipated.

It is also likely that new regulations will shift much of the responsibility for monitoring the protection of civil rights in the education of language minority children from the federal government to the states. Mr. Bell's comments accompanying the withdrawal of the regulations certainly suggest lower profile for the federal government. Newspaper editorials in the English language press have been virtually unanimous in their approval of this stance. This movement to local control is actively fostered by advocacy of "federalism" within the present administration. There is a conscious attempt to expunge all trace of association with racial bias from the term "states' rights." The Administration argues that "state governments have simply outgrown the inclination to discriminate because 'there's much more public consciousness about fairness.'"[8]

It is under the aegis of this new states' rights that control of bilingual education will move to the states. The same editorials which lauded the withdrawal of the proposed regulations as returning control to states and local schools were ominously mute when about the rights of non-English speaking children for equal access and participation in educational programs, or the obligations of state and local districts to provide services. In this shift the bilingual research community has an obligation to maintain its observation of the availability of educational equity, and of the impact of this administrative change of the quality of education that language minority children receive.

Out of all of these regulations, guidelines, court decisions,

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7. Lawrence Schweinhart and David P. Weikart, "Young Children Grow Up." Ypsilanti, MI, 1981.

8. New York Times, March 4, 1981.

and legislative mandates, there are few direct statements bearing on the conduct of bilingual research. There is, however, fairly clear identification of issues which necessitate research, and to which research can bring a substantive base for improvement of educational practice. The challenge now is for the research community to demonstrate its willingness to make that contribution so that the necessary resources can be obtained, and then to deliver a quality research product.